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Attorneys for Defendant, PALM SPRINGS UNIFIED SCHOOL DISTRICT

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE**

JOHN VILLANI, an individual,

Plaintiff,

v.

PALM SPRINGS UNIFIED SCHOOL
DISTRICT, a public entity, and DOES 1-5,
Inclusive,

Defendants.

) Case No. PSC 1606072

) **DEFENDANT PALM SPRINGS UNIFIED**
) **SCHOOL DISTRICT'S MOTION FOR A PRE-**
) **TRIAL PUBLICITY ORDER PROHIBITING**
) **PLAINTIFF AND PLAINTIFF'S COUNSEL**
) **FROM MAKING PUBLIC EXTRAJUDICIAL**
) **STATEMENTS REGARDING THE CASE; IN**
) **ADDITION TO OR IN THE ALTERNATIVE,**
) **AN ORDER THAT THE CASE BE TRIED**
) **ELSEWHERE IN RIVERSIDE COUNTY;**
) **DECLARATION OF CATHERINE A. GAYER,**
) **ESQ.**

) Date: August 15, 2019

) Time: 8:30 a.m.

) Dept.: PS2

) Reservation No.: RES92910

PLEASE TAKE NOTICE that on August 15, 2019 at 8:30 a.m., in Department PS2 of the above-entitled Court, located at 3255 E. Tahquitz Canyon Way, Palm Springs, CA., Defendant, PALM SPRINGS UNIFIED SCHOOL DISTRICT, will move this Court for a pre-trial publicity order to prohibit Plaintiff and Plaintiff's counsel from making certain public extrajudicial statements regarding this matter to ensure Defendant's right to a fair trial and an impartial jury. Defendant also requests, in addition to the pre-trial publicity order, or at least in the alternative to the same, that the Court issue an order that the case be tried in either the Riverside Main courthouse or Southwest Justice Center in Murrieta.

This Motion will be based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Catherine A. Gayer, Esq., and upon all such further evidence, both oral and documentary, as may be presented at the hearing on this Motion.

1 This court follows California Rules of Court, rule 3.1308 (a) (1) for tentative rulings (see Riverside
2 Superior Court Local rule 3316). Tentative Rulings for each law and motion matter are posted on the Internet
3 by 3:00 p.m. on the court day immediately before the hearing at
4 <http://www.riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have Internet access, you may obtain
5 the tentative ruling by telephone at (760) 904-5722.

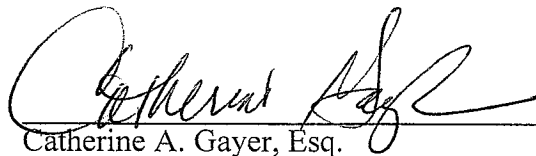
6 To request oral argument, not later than 4:30 p.m. on the court day before the hearing, you must (1)
7 notify the judicial secretary for Department PS2 at (760) 904-5722 and (2) inform all other parties. If no
8 request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the
9 matter effective the date of the hearing.

10 Unless otherwise noted, the prevailing party is to give notice of the ruling.

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12
13 DATED: July 16, 2019

Respectfully submitted,

WINET PATRICK GAYER CREIGHTON & HANES

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16 Catherine A. Gayer, Esq.
17 Attorneys for Defendant, PALM SPRINGS UNIFIED
18 SCHOOL DISTRICT
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 BACKGROUND

4 This case arises from a whistle-blower claim brought by Plaintiff JOHN VILLANI against his former
5 employer Defendant PALM SPRINGS UNIFIED SCHOOL DISTRICT (hereinafter “PSUSD” or “The
6 District”) Plaintiff’s Complaint alleges that he spent over a year complaining to his supervisors about David
7 Yoder’s inappropriate conduct with students. Instead of heeding to his warnings, school officials allegedly
8 “rallied” around Yoder and failed to investigate Plaintiff’s complaints. Plaintiff claims that District officials
9 retaliated against him, ultimately forcing him to resign to avoid a threatened termination. He further alleges
10 that school officials interfered with his efforts to gain employment in the local area.

11 The case proceeded to trial in June 2018. At the conclusion of the trial, the panel of twelve jurors
12 was given a special verdict form with a total of eight questions. The jury returned the special verdict form,
13 answering in the affirmative to the first five questions, but answering “no” to the sixth question. They did
14 not address the seventh or eighth questions. The Court entered judgment for Defendant. Plaintiff initially
15 filed a Motion for Mistrial which was not granted. Plaintiff then filed a Motion for New Trial and Motion
16 for Partial JNOV. On March 7, 2019, the Court ordered that the case be re-tried.

17 Throughout the case, Plaintiff and/or his attorneys have made public extrajudicial statements to the
18 media about his case. When the case was first filed, VILLANI contacted the media and gave them a copy
19 of his complaint and a select piece of evidence. There were horrible and defamatory statements made in
20 the complaint about certain District personnel. The Desert Sun initially ran the story on line with the names
21 of all persons identified in the complaint. Upon request of Defense Counsel, the reporter redacted the names
22 of those identified in the complaint. Most recently, Plaintiff’s attorney, Steve Kaplan, Esq., issued a press
23 release following the Court’s ruling on Plaintiff’s Motion for New Trial. The headline on the press release
24 reads “Court Grants New Trial to Palm Springs School District Whistleblower John Villani.” The
25 press release outlines Plaintiff’s allegations (some of which are blatantly false) and heavily charged “facts”
26 from his point of view and his theory of the case. One of the false statements is that “*After eight jurors*
27 *(rather than the requisite nine) voted in Mr. Villani’s favor on a questions about damages..*” First, the jury
28 voted “no” on question number 6, “*Was PALMSPRINGS UNTIFIED conduct a substantial factor in causing*

1 *harm to VILLANI?*” In addition, the trial judge, Randall Stamen kept the juror’s individual verdict forms
2 and 6 jurors voted, “Yes” on this question, so Plaintiff did not received a vote of 8 - 4 in his favor.

3 Mr. Kaplan saw the jurors’ forms himself at the same time as defense counsel, so he knows the
4 statement he gave to the press is false. It explains that Plaintiff tried to report his suspicions regarding David
5 Yoder’s conduct but the “*recalcitrant School District leadership...refused to listen.*” The press release also
6 includes a quote from Plaintiff himself - that “*management should not just cover it up and fire the*
7 *messengers...but should act responsibly and take action.*” VILLANI was not “fired”. He was a probationary
8 employee who did not meet the expectations of the job and was non-reelected for the next school term.
9 There is a distinct difference as is set forth in the Education Code.

10 Shortly after Plaintiff issued the press release, a local news outlet, the Desert Sun, reached out to
11 District officials for comment. Catherine Gayer, Esq., counsel for Defendant, issued a response on behalf
12 of the District. The press release is Exhibit “A,” the email from the Desert Sun reporter is Exhibit “B,” and
13 the response from the District is Exhibit “C.”

14 Even though the Palm Springs “metro area” is approximately 450,000 people, it is a tight-knit
15 community comprised of individuals who closely follow the local news. Defendant has good reason to
16 believe it would not receive a fair trial from an impartial jury should Plaintiff’s extrajudicial statements to
17 the public and the media continue. The nature of Plaintiff’s public statements, particularly highlighted in
18 the April 22, 2019 press release, is extremely prejudicial and present a clear and present danger that
19 Defendant would not receive a fair trial.

20 Defendant respectfully requests that this Court issue a “gag order” prohibiting Plaintiff and his
21 attorneys from making certain public extrajudicial statements including, but not limited to, issuing press
22 releases, initiating contact with the media, posting public social media commentary on the case, and making
23 prejudicial, inflammatory comments to the media. In the alternative, Defendant requests that the Court issue
24 an order that the case be tried in either the main historic courthouse in Riverside or at the Southwest Justice
25 Center in Murrieta.

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1 II.

2 A PRE-TRIAL PUBLICITY ORDER IS APPROPRIATE UNDER THESE CIRCUMSTANCES
3 AND

4 WILL ENSURE A FAIR TRIAL AND IMPARTIAL JURY FOR ALL PARTIES

5 A trial court has the power to issue a pre-trial publicity order ("gag order") to control pretrial
6 publicity to assure the accused a fair trial. Sheppard v. Maxwell (1966) 384 U.S. 333. A pretrial publicity
7 order may prohibit discussions of the merits of the case, the evidence, or trial tactics, as well as divulging
8 prejudicial matters. Id. This court recognized that there is good to come of free press reporting on trials,
9 but also pointed out:

10 "(l)egal trials are not like elections, to be won through the use of the meeting-hall, the radio,
11 and the newspaper...[i]t must not be allowed to divert the trial from the 'very purpose of a
12 court system * * * to adjudicate controversies, both criminal and civil, in the calmness and
13 solemnity of the courtroom according to legal procedures.' Cox v. State of Louisiana, 379
14 U.S. 559, 583, 85 S.Ct. 466, 471, 13 L.Ed.2d 487 (1965) (Black, J., dissenting). Among these
15 'legal procedures' is the requirement that the jury's verdict be based on evidence received in
16 open court, not from outside sources."

17 While gag orders are more common in criminal cases, they are allowed in civil cases if the
18 circumstances call for them. (See, Steiner v. Superior Court (2013) 220 Cal. App. 4th 1486.)

19 California courts have applied two different tests in determining the validity of a pre-trial publicity
20 order that acts as a prior restraint: (1) whether the publication to be restricted constitutes a clear and present
21 danger to the defendant's right to a fair trial, and (2) whether there is a reasonable likelihood that prejudicial
22 news would make impaneling an impartial jury difficult and tend to prevent a fair trial. Sun Co. of San
23 Bernardino v. Superior Court (4th Dist. 1973) 29 Cal. App. 3d 815; Younger v. Smith (2d Dist. 1973) 30
24 Cal. App. 3d 138. In civil cases, a gag order is appropriate if 1) If the speech to be restrained poses a clear
25 and present danger or serious and imminent threat to a protected competing interest (constitutional right to
26 a fair trial); 2) the order is narrowly tailored to protect that interest; and 3) no less restrictive alternatives
27 available. Steiner, supra 220 Cal. App. 4th at 1487.

28 In this case press releases such as those prepared by VILLANI clearly present a danger to the

1 Defendant's right to a fair trial. The release focuses on David Yoder in order to sensationalize this trial. The
2 media gave much attention to the Yoder criminal trial. VILLANI has capitalized on that fact and is
3 attempting to persuade the public (the potential jury pool), through the media that the decision of the school
4 board to non-reelect him had something to do with Yoder. In fact, it did not.

5 Defendant's request here is narrowly tailored. It does not seek to "gag" the media from running a
6 story on the trial. It only seeks to prohibit Plaintiff and his attorneys from approaching the media to give
7 them a story and particularly one that contains false information.

8 Even absent a protective order, attorneys are bound by the Rules of Professional Conduct which may
9 restrict statements to the media. For example, an attorney who is participating or has participated in the
10 investigations or litigation of a matter may not make an extrajudicial statement that a reasonable person
11 would expect to be disseminated by means of public communication if the member knows or reasonably
12 should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding
13 in the matter. Cal. Rules of Prof. Conduct, Rule 5-120(A). The Comment to Cal. Rules of Prof Conduct 5-
14 120 states, that whether an extrajudicial statement violates rule 5-120 depends on many factors, including:
15 (1) whether the extrajudicial statement presents information clearly inadmissible as evidence in the matter
16 for the purpose of proving or disproving a material fact in issue; (2) whether the extrajudicial statement
17 presents information the member knows is false, deceptive, or the use of which would violate Business and
18 Professions Code section 6068(d); (3) whether the extrajudicial statement violates a lawful "gag" order, or
19 protective order, statute, rule of court, or special rule of confidentiality (for example, in juvenile, domestic,
20 mental disability, and certain criminal proceedings); and (4) the timing of the statement.

21 By raising the standard in Rule 5-120, Defendant does not intend to imply that Plaintiff's counsel
22 is intentionally engaging in unprofessional or unethical conduct. Rather, Defendant does so to highlight just
23 how prejudicial the public extrajudicial statements are, in particular the April 22, 2019 press release. The
24 press release was issued after the Court ruled on Plaintiff's Motion for New Trial. It states that a new trial
25 has been ordered. The timing of the statement is prejudicial since any potential juror could read the press
26 release. The press release contains "factual" information about the case from Plaintiff's point of view. The
27 recitation of the facts and evidence are heavily biased, loaded, and charged. Defendant submits that the
28 "facts" presented are false and misleading. The entire case is about whether Plaintiff was non-re-elected as

1 a teacher because he was a whistleblower. He makes deceptive statements about he was ignored and the
2 District failed to take action. Moreover, he mis-characterizes the result of the last trial as well as how the
3 Court addressed that result. He states that the judge “recognized that a mistake had been made in entering
4 judgment in favor of PSUSD.” An average person is not likely to understand the polling issue that occurred
5 at the first trial. Instead an average person will likely believe that the judge made a mistake because the
6 evidence was contrary to the result.

7 Furthermore, Plaintiff and his attorney have initiated contact with the press about the new trial.
8 Plaintiff’s past and anticipated future statements present a clear and present danger to Defendant’s right to
9 a fair trial and impartial jury. Defendant requests an order that restricts Plaintiff and his attorney from
10 initiating contact with the media, issuing press releases, making public social media posts, and making
11 prejudicial, inflammatory statements to the media about the case. Defendant is not asking Plaintiff not speak
12 to the media about the case. If the media inquires about the case, both attorneys are charged with a
13 professional and ethical duty to make appropriate statements about the case in response. Defendant’s
14 proposal is narrowly tailored to protect its constitutional right to a fair trial while not hampering Plaintiff’s
15 First Amendment rights. Defendant is simply asking that Plaintiff not use the media to taint the jury pool
16 prior to the second trial this fall.

17 In the alternative, Defendant is requesting that the Court order that trial either take place in Riverside
18 or in Murrieta. Plaintiff may attempt to argue that this is a “less restrictive alternative.” While Defendant
19 is asking for such an order in the alternative (see Section III below), Defendant submits that Plaintiff should
20 still be prohibited from making the kind of extrajudicial statements about the case. While it is possible that
21 potential jurors in Riverside and Murrieta are less likely to read the news in the desert, desert news is
22 reported in other news sources and is easily found on the internet.

23 III.

24 THE CASE SHOULD NOT BE TRIED IN PALM SPRINGS, BUT RATHER IN RIVERSIDE 25 MAIN OR MURRIETA COURTHOUSES

26 In addition to, or at least in the alternative to, a “gag order,” Defendant requests that the Court issue
27 an order that the case be tried either in Riverside Main or the Southwest Justice Center in Murrieta, not in
28 Palm Springs. As discussed above, even though a potential juror may not closely follow the news in the

1 desert, allowing Plaintiff to continue making public statements about the case through press releases and
2 other means is prejudicial to Defendant. Defendant submits that an order requiring that the case be tried in
3 either Riverside Main or in Murrieta is fair and reasonable.

4 Pursuant to California Code of Civil Procedure Section 397(b), the Court has authority to transfer
5 the place of trial when there is reason to believe that an impartial trial cannot be had in that court. The
6 purpose of this provision is to ensure that litigants have the right to a trial before a fair and impartial tribunal
7 and to provide a procedure through which the right may be enforced and protected. Paesano v. Superior
8 Court (3d Dist. 1988) 204 Cal. App. 3d 17, 21. The prospect of jury trial is “*extremely important, if not*
9 *crucial, in determining whether there is reason to believe that an impartial trial cannot be had’ in the court*
10 *where the matter is pending.*” Nguyen v. Superior Court (1st Dist. 1996) 49 Cal.App.4th 1781, 1791 (citing
11 San Francisco Foundation v. Superior Court (1984) 37 Cal.3d 285, 299). The factors relevant in considering
12 a change of venue motion are the size of the potential jury pool and the nature and extent of the publicity.
13 Press-Enterprise v. Superior Court (4th Dist. 1994) 22 Cal.App.4th 498, 504 (citing Odle v. Superior Court
14 (1982) 32 Cal. 3d 932, 938-942).

15 **A. Size of the potential jury pool**

16 Defendant has good reason to believe that an impartial trial cannot be had in Palm Springs. Even
17 though the outlying areas bring the population to approximately 450,000, the Coachella Valley is more
18 intimate and “tightknit” than other communities of its size. The general population is well informed about
19 current events in the area. A child molestation story is a sensitive and alarming topic to most individuals.
20 It would be difficult to find a jury panel who has not followed the David Yoder case and has not formed an
21 opinion about the allegations made against Defendant. For this reason, an order requiring that the case be
22 tried in Murrieta or Riverside Main, not Palm Springs, is appropriate.

23 **B. Nature and extent of the publicity**

24 The media coverage on David Yoder has been extensive. The media coverage on the trial of Villani
25 v. PSUSD has been less extensive; however, the media has taken an interest in the case. News outlets were
26 present at the first trial in June 2018. While the media coverage has “lulled” since the trial, Plaintiff has re-
27 initiated contact with the media with his most recent press release. Defendant has reason to believe that
28 should Plaintiff continue to make contact with the media, the media will continue to report on the new trial.

1 The nature and extent of the publicity on the school district is such that it would be extremely
2 difficult to find an impartial jury pool in Palm Springs.

3 IV.

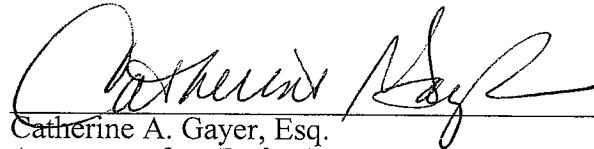
4 CONCLUSION

5 Based upon the foregoing facts and legal authorities, Defendant, PALM SPRINGS UNIFIED
6 SCHOOL DISTRICT respectfully requests that this court grant its motion for a gag order. In addition to,
7 or at least in the alternative to a gag order, Defendant also requests that the Court ensure that the case is tried
8 in Riverside-Main or Murrieta, not Palm Springs.

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10
11 DATED: July 15, 2019

Respectfully submitted,

WINET PATRICK GAYER CREIGHTON & HANES

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14 Catherine A. Gayer, Esq.
15 Attorneys for Defendant, PALM SPRINGS UNIFIED
16 SCHOOL DISTRICT
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1 **DECLARATION OF CATHERINE A. GAYER, ESQ.**

2 I, CATHERINE A. GAYER, ESQ., declare and state as follows:

3 1. I am an attorney at law, duly licensed to practice before all of the courts of the State of
4 California, and I am a member in the law firm of Winet Patrick Gayer Creighton & Hanes, attorneys of
5 record for Defendant, PALM SPRINGS UNIFIED SCHOOL DISTRICT, who is a party to this action herein.
6 If called upon as a witness, I could and would competently testify to the facts set forth in this declaration as
7 I have personal knowledge of the foregoing facts.

8 2. This case arises from a whistle-blower claim brought by Plaintiff JOHN VILLANI against
9 his former employer Defendant PALM SPRINGS UNIFIED SCHOOL DISTRICT (hereinafter "PSUSD"
10 or "The District") Plaintiff's Complaint alleges that he spent over a year complaining to his supervisors
11 about David Yoder's inappropriate conduct with students. Instead of heeding to his warnings, school
12 officials allegedly "rallied" around Yoder and failed to investigate Plaintiff's complaints. Plaintiff claims
13 that District officials retaliated against him, ultimately forcing him to resign to avoid a threatened
14 termination. He further alleges that school officials interfered with his efforts to gain employment in the
15 local area.

16 3. The case proceeded to trial in June 2018. At the conclusion of the trial, the panel of twelve
17 jurors was given a special verdict form with a total of eight questions. The jury returned the special verdict
18 form, answering in the affirmative to the first five questions, but answering "no" to the sixth question. They
19 did not address the seventh or eighth questions. The Court entered judgment for Defendant. Plaintiff filed
20 a Motion for New Trial and Motion for Partial JNOV. On March 7, 2019, the Court ordered that the case
21 be re-tried.


22 4. Throughout the case, Plaintiff and his attorneys of records have made public extrajudicial
23 statements to the media about his case. Most recently, Plaintiff's attorney, Steve Kaplan, Esq., issued a press
24 release following the Court's ruling on Plaintiff's Motion for New Trial. The headline on the press release
25 reads "Court Grants New Trial to Palm Springs School District Whistleblower John Villani." The press
26 release outlines Plaintiff's allegations and heavily charged "facts" from his point of view and his theory of
27 the case. It explains that Plaintiff tried to report his suspicions regarding David Yoder's conduct but the
28 "*recalcitrant School District leadership...refused to listen.*" The press release also includes a quote from

1 Plaintiff himself - that *"management should not just cover it up and fire the messengers...but should act*
2 *responsibly and take action."*

3 5. Shortly after Plaintiff issued the press release, a local news outlet, the Desert Sun, reached
4 out to District officials for comment. I had to issue a response on behalf of the District. The press release
5 is Exhibit "A," the email from the Desert Sun reporter is Exhibit "B," and the response from the District is
6 Exhibit "C."

7 6. Even though the Palm Springs "metro area" is approximately 450,000 people, it is a tight-knit
8 community comprised of individuals who closely follow the local news. Defendant has good reason to
9 believe it would not receive a fair trial from an impartial jury should Plaintiff's extrajudicial statements to
10 the public and the media continue. The nature of Plaintiff's public statements, particularly highlighted in
11 the April 22, 2019 press release, is extremely prejudicial and present a clear and present danger that
12 Defendant would not receive a fair trial.

13 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is
14 made under the laws of the State of California. Executed this 15th day of July 2019 at Palm Springs,
15 California.

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18 CATHERINE A. GAYER, ESQ.
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STEVEN J. KAPLAN

LAW OFFICES OF STEVEN J. KAPLAN, PC

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FOR IMMEDIATE RELEASE

April 22, 2019

PRESS CONTACT:

Steven Kaplan, Esq.

(310) 312-1500

Court Grants New Trial to Palm Springs School District Whistleblower John Villani

Lawsuit Challenges Retaliatory Firing for Complaints about Suspected Child Molester

Judge Acknowledges Serious Procedural Errors Require Second Trial

Palm Springs, CA – In 2016, former Palm Springs special education teacher **John Villani** sued Palm Springs Unified School District (**PSUSD**), alleging he was fired for complaining about misconduct by **David Yoder**, a teacher's aide suspected of improper sexual conduct toward students. PSUSD ignored Mr. Villani's complaints, and Mr. Yoder was later convicted of a variety of child sex abuse crimes in the Palm Springs area, including human trafficking, child pornography, and lewd sexual acts with one of Mr. Villani's students. (A Desert Sun article about the lawsuit is attached as **Exhibit A**. A copy of the original Complaint is attached as **Exhibit B**.)

Mr. Villani's claims were heard before a jury in the summer of 2018. A majority of jurors found that Mr. Villani had complained about Mr. Yoder's conduct and that the School District retaliated against Mr. Villani by terminating him. After eight jurors (rather than the requisite nine) voted in Mr. Villani's favor on a question about damages, the Court mistakenly entered judgment in favor of the District, rather than order the jury to continue deliberations or declare a mistrial.

After nine months of post-trial motions and hearings, the Superior Court finally acknowledged its mistake – which denied Mr. Villani his Constitutional right to a jury trial – and ordered a new trial. On April 9, 2019, the Court set September 6, 2019 for the new trial. (A copy of the Court’s New Trial Order is attached as **Exhibit C**.)

The case of David Yoder’s sexual abuse and other inappropriate sexual conduct toward children in the Palm Springs Unified School District and elsewhere is but one of many cases in which serious crimes of child abuse and molestation have been reported in Inland Empire and Coachella Valley public school systems.¹

DETAILS

John Villani is a teacher of developmentally and mentally disabled children. A teacher’s aide in his department at PSUSD was David Yoder, then about 40 years old. Mr. Villani witnessed Mr. Yoder commit a variety of suspicious acts involving young students; Mr. Yoder invited young boys to his home, had at least one of the children in Mr. Villani’s class sleep over at his home, frequently professed his love for young boys, looked at pictures of young boys on the internet using a school computer, and made comments about young boys’ physical attributes.

Mr. Villani became very disturbed by Mr. Yoder’s pedophilic behavior and repeatedly reported Mr. Yoder to PSUSD management, begging them to do something. But recalcitrant School District leadership, including PSUSD’s former Director of Special Education Kathy Little and Program Specialist Debra Sather, refused to listen. They went so far as to criticize Mr. Villani for reporting these serious matters and accused him of harassing Mr. Yoder.

Mauricio Arellano, PSUSD’s former Assistant Superintendent of Human Resources (and now Superintendent of Redlands Unified School District), eventually fired Mr. Villani in

¹ See, <https://www.pe.com/2018/10/15/riverside-unified-teachers-aide-accused-of-sexual-abuse-was-left-unsupervised-even-after-warning-from-state/>; <https://www.dailybulletin.com/2018/08/28/eight-more-men-arrested-in-rancho-cucamonga-teen-sex-sting-that-included-banning-school-official/>; <https://www.redlandsdailyfacts.com/2018/12/11/after-30-2-million-in-settlements-redlands-unified-adopts-sweeping-policy-changes-to-quell-teacher-sex-abuse/>; <https://www.redlandsdailyfacts.com/2018/12/11/after-30-2-million-in-settlements-redlands-unified-adopts-sweeping-policy-changes-to-quell-teacher-sex-abuse/>; <https://www.ksq.com/news/dsusc-issues-statement-on-parent-accused-of-sexual-misconduct/807443947>.

June 2014. In the first trial, Mr. Villani testified that when Mr. Arellano fired him, he told Mr. Villani that he should have left Mr. Yoder alone.

Although PSUSD shielded Mr. Yoder from Mr. Villani's complaints, Mr. Yoder was eventually arrested in February 2015, and a year later convicted of 10 felony counts, including lewd and lascivious acts on a child under 14 (one of the boys in Mr. Villani's class), child procurement (persuading a child to commit a sexual act), human trafficking, conspiracy to produce child pornography, and harboring a fugitive. The California Court of Appeal upheld his conviction. (The appellate decision affirming Mr. Yoder's conviction [and detailing his odious illegal actions] is attached as **Exhibit D.**)

Mr. Villani's wrongful termination lawsuit went to trial in June 2018. At the first trial, Mr. Villani testified that, because of his wrongful firing, he was forced to move himself and his family out of state in search of other employment. Though he ultimately returned to northern California, he was forced to take lower paying jobs. In addition to serious emotional distress for Mr. Villani and his family, a forensic economist testified at trial that his past and future loss of wages and benefits will exceed \$800,000.

On July 2, 2018, after a 2½ week trial, a jury found, on a 10-2 vote, that PSUSD fired Mr. Villani because of his complaints about Mr. Yoder. (In California, a party – either a plaintiff or a defendant – requires a 9-3 or better majority in order to prevail.) The jury voted only 8-4 in his favor on a question concerning damages. Instead of sending the jury back to deliberate (because neither party garnered 9 votes), or declaring a mistrial and ordering a new trial, the Court mistakenly entered judgment in favor of PSUSD, thereby denying Mr. Villani his Constitutional right to a full, fair and complete jury trial.

After 9 months of post-trial motions, Riverside Superior Court Judge Randall Stamen recognized that a mistake had been made in entering judgment in favor of PSUSD, and ordered a new trial. Judge Stamen also ordered that, in the new trial, the question whether Mr. Villani was a legitimate whistleblower is now established as a matter of law.

“Although this has taken a long time, I am grateful to Judge Stamen for giving us a new trial,” said **Plaintiff John Villani**. “Schools need to be vigilant about child abuse and the dangers of hiring pedophiles like David Yoder. When we teachers bring our suspicions to

the attention of management, management should not just cover it up and fire the messengers, like they did to me, but should act responsibly and take action. I am thankful that I will now have a chance to prove to a jury that Mr. Arellano and the School District violated the law by firing me because I reported my suspicions about David Yoder.”

Plaintiff John Villani’s attorney **Steven Kaplan** added, “Judge Stamen’s ruling – including his finding that Mr. Villani qualifies as a whistleblower under our employment laws - reconfirms my confidence in our judicial system. Mr. Villani acted courageously – and jeopardized his own livelihood – by reporting Mr. Yoder. If the School District had listened, it is likely that at least one young boy would not have been molested, and probably other wrongdoing could have been prevented. By getting a chance at a fair trial, we are hopeful other teachers will be encouraged to report illegal conduct against children when they see it.”

-end-

From: Hong, Joseph [<mailto:JHong@palmspri.gannett.com>]
Sent: Monday, May 6, 2019 9:40 AM
To: Boiko, Joan (jboiko@psusd.us) <jboiko@psusd.us>
Subject: Villani Lawsuit

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Joan,

I'm writing a story about Johnnie Villani, a former PSUSD teacher who sued the district a couple years ago alleging that he was fired for complaining about David Yoder, the teacher who was convicted a few years ago for sexually abusing students. This will actually be a re-trial for Villani's case. The first trial ended, but the court made an error with the decision, so I believe it was deemed a mistrial.

I was wondering if the district has a statement regarding the lawsuit. I know it's been a couple years, so I also wanted to take the opportunity to ask if PSUSD has updated its policies regarding teacher background checks and reporting suspicious behavior and misconduct.

Attached is the press release I received from Villani's lawyer, the original complaint and the order granting a new trial. Let me know if I can clarify anything. I would need a response by 5pm tomorrow (Tuesday). Thanks.

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Education Reporter

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District's Response to the Press Release:

"John Villani was a probationary employee at PSUSD in the 2013 – 2014 school year, teaching special education. He failed to meet the expectations of the job and was non-reelected to his position. Following his discharge from this District, he sought and received employment in the Boise Unified School District in Boise ID. He was hired on as a probationary employee in Boise, again teaching special education. When he was allowed to resign in lieu of being discharged from that school district for failing to meet the expectations of the job, he sued PSUSD alleging that he was terminated from PSUSD in retaliation for reporting to his supervisors odd behavior by a paraprofessional who worked in Villani's classroom. In the previous school year (2012-2013)

A trial in the action took place in June of 2018. The Court entered a judgment in favor of the District. However, the court later determined that the jury was actually hung by a vote of 6 – 6. After 9 months of post-trial motions by Villani, the court granted a new trial on the issues of:

- **Was JOHN VILLANI's disclosure of information about his co-worker a contributing factor in PALM SPRINGS UNIFIED SCHOOL DISTRICT's decision to non-reelect him?**
- **Was PALM SPRINGS UNIFIED SCHOOL DISTRICT's conduct a substantial factor in causing harm to JOHN VILLANI?**

During the 2018 trial, Villani testified that when he reported his co-worker's behavior to his supervisor, she responded , telling him "Good job." The evidence in the first trial also revealed that Villani's supervisor immediately followed up on Villani's report by calling a meeting with the paraprofessional and the mother of a child in Villani's class. Both the mother and the co-worker denied that any activity outside of the school. Unfortunately shortly thereafter, the co-worker gained physical custody of the child from the child's mother. He also eventually gained education rights from the probate court. It was later determined in a criminal trial that the child was abused by Villani's former co-worker outside of school at the co-worker's home. The court entered judgment in the 2018 trial following a finding by the jurors that PSUSD's conduct was not a substantial factor in causing harm to Villani. The case will be re-tried in September of 2019. The District looks forward to prevailing on these issues at the new trial.'

3 **PROOF OF SERVICE**

4 I, Marcia G. Perez, declare as follows: I am over the age of 18 and not a party to the case. I am
5 employed in the County of Riverside, State of California, where the mailing occurs; and my business address
is 1111 E. Tahquitz Canyon Way, Suite 113, Palm Springs, California 92262.

6 On July 17, 2019, I served the foregoing document(s) described as **DEFENDANT PALM**
7 **SPRINGS UNIFIED SCHOOL DISTRICT'S MOTION FOR A PRE-TRIAL PUBLICITY ORDER**
8 **PROHIBITING PLAINTIFF AND PLAINTIFF'S COUNSEL FROM MAKING PUBLIC**
9 **EXTRAJUDICIAL STATEMENTS REGARDING THE CASE; IN ADDITION TO OR IN THE**
10 **ALTERNATIVE, AN ORDER THAT THE CASE BE TRIED ELSEWHERE IN RIVERSIDE**
11 **COUNTY; DECLARATION OF CATHERINE A. GAYER, ESQ.** on the interested parties in this action
by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

12 Steven J. Kaplan, Esq.
13 LAW OFFICES OF STEVEN J. KAPLAN
14 1880 Century Park East, Suite 614
15 Los Angeles, CA 90067
16 Telephone: (310) 312-1500
17 Facsimile: (424) 652-2221
18 *(Attorney for Plaintiff, John Villani)*

19 (XX) BY MAIL. I am readily familiar with the firm's practice of collection and processing of
20 correspondence for mailing with the United States Postal Service, and that the correspondence shall
21 be deposited with the United States Postal Service this same day in the ordinary course of business
pursuant to California Code of Civil Procedure § 1013a.

22 () BY FAX. In addition to service by mail as set forth above, a copy of said document(s) were also
23 delivered by facsimile transmission to the addressee pursuant to California Code of Civil Procedure
24 § 1013(e).

25 () FAX FILING: At the time of transmission, I was at least 18 years of age and not a party to this legal
26 proceeding. On /// at /// a.m./p.m., I transmitted to the Court the following documents:
27 by fax machine, under California Rules of Court, rule 2.304. The Court's fax telephone number that
28 I used was ///. The fax machine I used complied with rule 2.301 and no error was reported by the
machine. Under rule 2.304, I caused the machine to print a transmission record of the transmission,
a copy of which is attached.

() BY EMAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the
parties to accept service by mail or electronic transmission, I caused the documents to be sent to the
persons at the email addresses listed on the attached Service List. I did not receive, within a
reasonable time after the transmission, an electronic message or other indication that the
transmission was unsuccessful.

Executed July 17, 2019, at Palm Springs, California. I declare under the penalty of perjury under the
laws of the State of California that the above is true and correct.



Marcia G. Perez